

EXCEPTION
ORIGINAL



BEFORE THE ARIZONA CORPORATION COMMISSION
RECEIVED

COMMISSIONERS

2005 SEP 15 P 3:43

JEFF HATCH-MILLER, Chairman

WILLIAM A. MUNDELL

MARC SPITZER

MIKE GLEASON

KRISTIN K. MAYES

AZ CORP COMMISSION
DOCUMENT CONTROL

In the matter of:

CENTENARIOS GOLD INC.
5190 NORTH 83RD STREET
SCOTTSDALE, AZ 85250

TIM WATT AND JANE DOE WATT
5190 NORTH 83RD STREET
SCOTTSDALE, AZ 85250

Respondents.

DOCKET NO. S-03584A-05-0000

**SECURITIES DIVISION'S EXCEPTIONS TO
RECOMMENDED OPINION AND ORDER**

Pursuant to R14-3-110(B) of the Arizona Administrative Code, and based on the recommended Opinion and Order ("Opinion") issued by the Administrative Law Judge in this matter on September 6, 2005, the Securities Division ("Division") of the Arizona Corporation Commission hereby submits its Exceptions to certain portions of the Opinion on the grounds that while the Opinion made at least five Findings of Fact supporting the fact that A.R.S. § 44-1991 was violated, it failed to conclude that violations of A.R.S. § 44-1991 occurred. Each of those findings do support a violation of A.R.S. § 44-1991.

In the Opinion, the Administrative Law Judge found that Respondents' Offering Document "implied that the Moris Mine, an open pit mine, had been extremely profitable by alleging that it and (sic) had produced approximately 500,000 ounces of gold." Opinion, ¶ 13. It went on to find, "CGI's Offering Document *fails to disclose* that Manhattan totally abandoned the Moris Mine project by the year 2000 and suffered losses." Opinion, ¶ 15 (Emphasis added.) That finding of nondisclosure is a violation of A.R.S. § 44-1991(2). *See In re Easy Money Auto Leasing, et al.,*

1 ACC Docket No. S-03415A-01-0000, Decision No. 65162, August 29, 2001 (Providing
2 incomplete or inaccurate financial information to investors or inaccurate information about
3 industry violates A.R.S. § 44-1991).

4 The Opinion went on to find, "Further projecting the benefits of an investment in CGI, the
5 example cited by Respondents would lead one to believe that an after-tax profit of \$20,000 per day
6 could be earned which equates to a total of over \$7 million per year in profits. The Division's
7 investigator found that *Respondents failed to furnish any supporting financial documents* which
8 would substantiate the optimistic projections which appeared in the Offering Document."
9 Opinion, ¶ 16 (Emphasis added.) Again, the finding of failing to disclosure material information is
10 a violation of A.R.S. § 44-1991(2). *In re Forex Investment Services Corp.*, ACC Docket No. S-
11 03177A-98-0000, Decision No. 62403, March 3, 2000 (Failure to provide financial statements
12 reflecting financial condition of company violates A.R.S. § 44-1991.)

13 Similarly, the Administrative Law Judge also found no support given for other financial
14 representations made by Respondents, Opinion, at 17, another violation of A.R.S. § 44-1991(2).

15 The Administrative Law Judge also found that Respondent Watt acknowledged that he
16 failed to disclose that he "went broke" mining for gold. Previous financial failure is certainly a
17 material fact that must be disclosed. *See In re Stedman, et al.*, ACC Docket No. S-03353A-00-
18 0000, Decision No. 64284, December 28, 2001 (Failure to disclose financial condition of the
19 principals, specifically a previous bankruptcy, violates A.R.S. § 44-1991). Respondents' failure to
20 disclose he went "broke" violated A.R.S. § 44-1991(2).

21 Finally, the Administrative Law Judge found, "It certainly appears that the optimistic
22 projections cited by Mr. Watt in CGI's Offering Document was based primarily on speculation in
23 the hope that investments would be encouraged and the mine would prove to be profitable."
24 Projections without a basis in reality violate A.R.S. § 44-1991(2). *See e.g., Easy Money; Forex*
25 *Investment Services Corp.*.

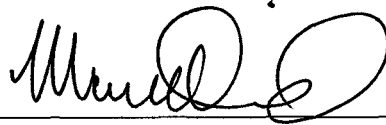
1 Despite all these findings of fact by the Judge, he did not conclude that any violations of
2 A.R.S. § 44-1991 occurred, reasoning instead that Respondents had warned that an investor could
3 lose all his money. However, a mere warning that an investor could lose his investment does not
4 allow a person to avoid fraudulent statements. *Securities and Exchange Commission v. Galaxy*
5 *Foods, Inc.*, 417 F. Supp., 1225 (E.D.N.Y. 1976) (Unless disclaimer specifically corrects the
6 specific misrepresentations that have been made, it does not allow defendant to avoid securities
7 fraud violations.) That is clearly the law, otherwise no matter how outrageous or fraudulent a
8 respondent acted, he could avoid A.R.S. § 44-1991 liability by simply including a statement that
9 the investor could lose his investment. This rule is particularly applicable in a case like this in
10 which Respondent Tim Watt is a lawyer who has been involved in the mining industry for a
11 number of years. Transcript of June 23, 2005, page 8, lines 15-23. Therefore, the Judge
12 incorrectly assumed that the Respondents' statement absolved them of A.R.S. § 44-1991 liability.

13 The Opinion also found that "the fact that no one actually invested in the offering further
14 mitigates our view of the fraud allegations and any final sanctions ordered hereinafter." Opinion, ¶
15 46. What is ignored, however, is that A.R.S. § 44-1991(A) states, "It is a fraudulent practice and
16 unlawful for a person, in connection with a transaction or transactions within or from this state
17 involving an offer to sell or buy securities" Thus, whether anyone actually invested in an
18 offering is irrelevant to a determination of whether the statute was violated. The fact that the
19 Securities Division proactively located and stopped Respondents from engaging in violations of
20 the Securities Act before they did additional harm should not be a basis for finding they did not
21 violate the Act. According to the plain terms of the statute, all that is needed is an offer, which is
22 exactly what occurred here.

23 The Judge is correct that the nature of the violation or whether any sales occurred is
24 relevant on the issue of any final sanctions. That is where the Commission should properly
25 balance the overall activity of the Respondents. In this case, the Securities Division agrees with
26

1 the Judge that although the penalty could be substantially greater, \$5,000 is an appropriate
2 sanction.

3
4 Dated this 15th day of September, 2005

5
6 By 
7 Mark Dinell
8 Attorney for the Securities Division
of the Arizona Corporation Commission

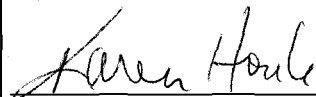
9 ORIGINAL AND THIRTEEN (13) COPIES of the foregoing
10 filed this 15th of September, 2005, with

11 Docket Control
12 Arizona Corporation Commission
1200 West Washington
Phoenix, AZ 85007

13 COPY of the foregoing mailed this
14 15th day of September, 2005, to:

15 Centenarios Gold Inc.
5924 North 83rd Street
16 Scottsdale, AZ 85250

17 Tim Watt
5924 North 83rd Street
18 Scottsdale, AZ 85250

19
20 
21